

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Henry Oliver	Team: Squad #3	CCRB Case #: 201804588	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/01/2018 3:03 PM	Location of Incident: 102-30 67th Avenue	Precinct: 112	18 Mo. SOL 12/1/2019	EO SOL 12/1/2019	
Date/Time CV Reported Fri, 06/01/2018 8:15 PM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 06/08/2018 11:12 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Marco Libongco	10478	938858	112 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Islam Shafik	34	945440	112 PCT
2. POM Michael Castelli	16083	933678	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Marco Libongco	Force: Police Officer Marco Libongco used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

### Case Summary

On June 1, 2018, § 87(2)(b) filed this complaint, in person, with IAB. On June 8, 2018, IAB referred the complaint to the CCRB via log #18-21899.

On June 1, 2018, at approximately 3:00 p.m., § 87(2)(b) was driving with his wife and § 87(2)(b) on 67<sup>th</sup> Avenue in Queens. A delivery truck was double parked in front of 102-30 67<sup>th</sup> Avenue, and as § 87(2)(b) attempted to pass the truck, his vehicle hit the truck's front bumper. § 87(2)(b) exited his vehicle and entered a physical and verbal dispute with the truck's driver. § 87(2)(b) called police to the location, and PO Michael Castelli and PO Marco Libongco, of the 112<sup>th</sup> Precinct, responded to the location. While interacting with the officers, PO Libongco pushed § 87(2)(b) two times in his chest (**Allegation A: Force**, § 87(2)(g)).

Officers obtained video footage of the incident from building security at 102-30 67<sup>th</sup> Avenue in Queens while present at the location. A copy of the footage was forwarded to the CCRB from IAB off-site via IAB request.

### Findings and Recommendations

#### **Allegation (A) Force: Police Officer Marco Libongco used physical force against**

§ 87(2)(b)

It is undisputed that PO Castelli and PO Libongco arrived to 102-30 67<sup>th</sup> Avenue in response to the dispute § 87(2)(b) had with the truck driver, and that during their interactions, PO Libongco made physical contact with § 87(2)(b).

In his CCRB statement, § 87(2)(b) explained that PO Castelli and PO Libongco arrived to the location and took statements from him and the truck driver. § 87(2)(b) told the officers that he had been pushed and punched by the truck driver. PO Castelli entered into the apartment building at 102-30 67<sup>th</sup> Street to review video footage of the interaction between both parties that had been recorded on the external cameras of the building. When he returned, PO Castelli accused § 87(2)(b) of lying to him about what happened, and told him that while he could file an accident report regarding the vehicle collision, he could not file a report regarding being assaulted. PO Libongco approached § 87(2)(b) and asked how he had been pushed by the truck driver. He spoke with him for approximately four minutes before PO Libongco demonstrated the push on § 87(2)(b) by pushing him two times, in his chest, with both hands. The push was enough to cause § 87(2)(b) to step back approximately ten feet. § 87(2)(b) told PO Libongco that he could not push him that way, but because he believed the officers were not going to assist him, he stopped speaking with both officers.

§ 87(2)(g)

PO Libongco did not believe § 87(2)(b) was assaulted by the truck driver. PO Libongco attempted to explain this to § 87(2)(b) after reviewing video footage that PO Castelli collected on his phone from the apartment building at 102-30 67<sup>th</sup> Street. He told § 87(2)(b) that if he approached individuals on the street that way, "more than likely they would punch him in the face." § 87(2)(b) did not seem to understand what PO Libongco was saying, and PO Libongco attempted to explain this to him for approximately ten minutes. At that time, PO Libongco physically demonstrated what behaviors he advised against on § 87(2)(b). PO Libongco told § 87(2)(b) that he could not do "this" to people, placed two fingers from each hand on § 87(2)(b)'s chest, and "tapped" him. PO Libongco said § 87(2)(b) did not like that he was so close to him, which was the point he was trying to make to him. PO Libongco noted that § 87(2)(b) may have said, "Don't touch me" after

he tapped him in his chest, but did not move back in response to any force used by PO Libongco in tapping his chest.

PO Castelli's statement was § 87(2)(g) that PO Libongco told § 87(2)(b) that if you enter people's space, and behave aggressively, people are going to try and defend themselves. PO Libongco got very close to § 87(2)(b) to further demonstrate what behaviors not to engage in. PO Libongco said, "You can't do this," and touched § 87(2)(b)'s chest with both hands, and as PO Castelli explained this during his interview, he extended his arms in a pushing motion. Only PO Libongco's fingertips made contact with § 87(2)(b) and he did not use his entire palm to demonstrate the action. PO Castelli described this action as a "nudge." He could not remember if PO Libongco made contact with § 87(2)(b) once or twice. PO Castelli said the force used was "minimal to none," and after PO Libongco took this action, § 87(2)(b) stepped back from PO Libongco. PO Castelli could not recall if § 87(2)(b) made any complaints about the interaction at that time.



§ 87(2) \_VideoFootage.mp4

The SnagIt clip was taken from video footage from the apartment building at 102-30 67<sup>th</sup> Street, which was obtained from IAB at the 112<sup>th</sup> Precinct (BR 01). The footage shows PO Castelli, PO Libongco, § 87(2)(b) and his wife, and the driver of the truck, who is wearing a black t-shirt, speaking next to § 87(2)(b)'s vehicle in the middle of the 67<sup>th</sup> Street in Queens. Between 00:19 and 00:23, PO Libongco approaches § 87(2)(b) and pushes him on his chest with both hands, with what appears to be two flat palms. § 87(2)(b) takes a step back as a result of the push. PO Libongco remains close to § 87(2)(b) as they speak, and between 00:32 and 00:45, PO Libongco pushes § 87(2)(b) two more times in the same manner, causing § 87(2)(b) to step back with each push. After the third push, the camera's view of the interaction is obstructed by a tree, but based on the observable movements of PO Libongco and § 87(2)(b) it appears that a fourth push may have occurred out of view of the camera.

Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (BR 02).

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) has been a party (BR 03).
- PO Libongco has been a member-of-service for thirteen years and this is the first CCRB complaint to which he has been a subject.

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of September 21, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR 04).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date